

REMARKS

The following remarks are submitted to address all issues in this case, and to put this case in condition for allowance. Applicant amends the claims in this case simply to better define the subject matter of the present invention; no new matter is added in these amendments.

Application claims 34, 35, 38-44, 47-50, and 57-63 are pending in the application. Claim 57 is withdrawn from consideration. Application claims 34, 47, 50, and 57 are the only independent claims. Applicant has studied the Office Action mailed June 15, 2007 (“Office Action”) and has the following remarks.

Response to Restriction Requirement

In response to the Office Action mailed June 15, 2007, as apparently suggested by the Examiner’s restriction requirement, Applicant withdraws claim 57. Applicant understands the Examiner found claim 57 to represent a wholly separate species to previously indicated groups and genres, and that the Examiner found no pending or cancelled generic claim to which claim 57 applies. For this reason, Applicant has withdrawn claim 57 but reserves the right to pursue the subject matter of claim 57 in a divisional application, in the event no generic claim is found allowable.

Applicant notes an apparent typographical error in the Office Action, which requests Applicant to withdraw dependent claim 56 while noting claim 57 is newly submitted and directed to a different invention. If the Examiner did not intend Applicant to withdraw claim 57 as Applicant does herein, clarification would be greatly appreciated.

The Examiner has rejected prior claims 34-56 under 35 U.S.C. § 103(a) as being unpatentable over Weber et al. in view of Simonson. Applicant respectfully traverses this rejection, as the combination of Simonson and Weber fails to show all of Applicant's claimed elements, namely the multiple handles on each arm dedicated to pushing or pulling, or diverging or converging, exercise. In addition, Applicant respectfully asserts that it is not obvious to combine Simonson and Weber to provide the device of any of the pending claims, because Simonson teaches away from the designs of the present claims and neither reference provides any motivation to combine.

It is not obvious to combine Simonson and Weber, because there is no motivation to combine.

In order for Applicant's claims to be unpatentable over Weber in view of Simonson, it must be obvious to combine the machine of Weber, that provides both push-type and pull-type exercise, with nonparallel pivot points (which, Applicant assumes, the Examiner functionally links to nonparallel axes). *See* Office Action at 3 ("Weber et al do not disclose said first axis and said second axis are not parallel to each other. Simonson discloses a first axis and second axis are that not [sic] parallel to each other (fig. 2). It would have been obvious to use Simonson's pivot points with Weber et al's frame."). Even if the combination of Simonson and Weber disclosed all elements of Applicant's claim (which will be assumed for the sole purpose of discussion herein without admission as to the correctness of that assumption), Applicant respectfully disagrees with the Examiner's contention that it would be obvious to combine Simonson's pivot points with Weber's push/pull exercise device. In brief, Applicant so disagrees on the grounds that the Examiner has failed to state a motivation to combine; the Examiner has failed to assert that all of Applicant's claimed elements are rendered obvious; and the references teach away or are silent as to any motivation to combine.

Firstly, Applicant asserts that the Examiner has failed to even state a motivation to combine Simonson with Weber. The Examiner provides no such motivation in the Office Action, such that Applicant respectfully asserts that the Examiner has not made a prima facie case of obviousness and Applicant's claims are allowable. *See Ex Parte Erkey et al.*, Appeal 20071375, dtd. May 11, 2007 ("We determine that the Examiner has not provided a sufficient reason or explicit analysis of why the disclosures of the references should be combined."); *Ex Parte Owlett*, Appeal 20070644, dtd. June 20, 2007 ("Further, the Examiner has not provided any evidence that [the combination] was conventional in the art.").

Secondly, Applicant respectfully asserts that the Examiner's argument of obviousness does not address all of Applicant's claims, including but not limited to claims 38, 58-61, 50, and claims dependent from 50. Applicant notes that the Examiner only stated that "it is well known as taught by Simonson to use non parallel pivots point [sic] to provide a method of *converging* exercise." Office Action, p. 3 (emphasis added). Applicant claims nonparallel axes implemented in *diverging* exercise, in independent claim 50, dependent claims therefrom, and dependent claims 38, and 58-61. The Examiner has not asserted that Simonson disclosed or that it would be obvious to combine pivot points or nonparallel axes associated with such diverging exercise. Applicant respectfully asserts that the Examiner has not made a prima facie case of obviousness for Applicant's claimed combination of nonparallel axes and a diverging exercise, such that claim 50, its dependent claims, and claims 38, and 58-61 are allowable.

Even if the Examiner had stated a motivation to combine, Applicant respectfully asserts that Simonson's teaching away from and Weber's silence regarding any motivation to combine rebuts such a statement. Simonson explains that his nonparallel pivot points are designed to remedy the unique biomechanical stresses of pushing exercises, which are not significantly

experienced during pulling exercises. Col. 7 ll. 30-33 (“This sensation [that the exercise stroke is unstable because lateral hand movement is unresisted] is more pronounced in exercises requiring pushing, such as the shoulder press exercise of the present exercise machine, than in pulling exercises.”); *see generally* col. 7 ll. 14-50 (describing the pivot points in their general use for pushing, shoulder press exercises and not pulling exercises). According to Simonson, Simonson’s pivot points are in fact not at all necessary for pulling exercises, for which Weber is designed, given the human body’s different physical requirements. Simonson thus teaches away from combining pivot points (and nonparallel axes) with a device performing a pull-type exercise, such as Weber.

In addition, Weber fails to provide a motivation to combine pulling exercise and nonparallel axes. Weber shows the use of only parallel axes in pushing and pulling exercise. Weber, like Simonson, appears satisfied with the biomechanics of parallel axes and pulling exercise.

Applicant’s device, which includes nonparallel axes in its pushing and pulling movements, wherein those nonparallel axes contribute to both movements’ comfort and efficiency, is in contravention to Simonson’s explicit teaching away that pulling movements do not benefit from such nonparallel axes. Applicant’s claimed combination of those two elements is therefore nonobvious given this clear lack of a motivation to combine and, in fact, teaching away from application of pivot points for pull/push machines. There is no motivation to combine other than that granted by Applicant’s present disclosure. *See* MPEP 2145; *Ex Parte Crawford et al.*, Appeal 20062429, dtd. May 30, 2007 (“We find no suggestion to combine the teachings and suggestions of [the references], as advanced by the Examiner, except from using [Applicant’s] invention as a template through a hindsight reconstruction of [Applicant’s]

claims.”). Applicant’s claims for the nonobvious combination of pull-type or diverging exercise and nonparallel axes are therefore believed allowable.

There is also no motivation to combine Simonson’s nonparallel axes with any reference showing a fixed path of motion in a converging push exercise. The movements provided by Simonson are free-motion; there is relatively little constraint on the path through which the user’s arms travel other than those imposed by the user. Col. 2 ll. 37-49 (providing two objects of Simonson’s invention wherein the user can vary the distance between his hands and “select the path of hand motion”). In contrast, Applicant has disclosed and claimed in claim 50 a machine providing motion along a fixed path which also has nonparallel axes. The Examiner has not provided, nor do any cited reference provide, any motivation to combine nonparallel axes with a fixed path of motion in converging push and diverging pull exercise. Applicant’s claim 50 is therefore allowable as nonobvious.

Claims 40, 49, and 50: Applicant’s claimed handles are not shown by Simonson or Weber.

Applicant respectfully contends that the Examiner’s implicit assertion that claim 50 is obvious must fail, because not all elements therein are shown by the combination of Weber and Simonson. The Examiner did not assert that either Weber or Simonson show (and neither does show) Applicant’s device of claim 50. Specifically, neither reference provides a first set of at least two handles, a first handle of said first set attached to said first arm and a second handle of said first set attached to said second arm; and a second set of at least two handles, a first handle of said second set attached to said first arm and a second handle of said second set attached to said second arm, wherein the first set is manipulated in diverging exercise and the second set is manipulated in converging exercise. Similar multiple handles per arm assigned to diverging or converging exercise are also claimed in dependent claims 40 and 49. Because these elements are

not shown or asserted to be shown, Applicant believes claim 50, dependent claims therefrom, and claims 40 and 49 are in position for allowance.

Applicant's multiple sets of handles or multiple handles per arm permit a user to engage in converging or diverging exercise with minimal adjustment to the machine. Such adjustment need only be for the user's comfort and health, rather than the machine's functionality. At no point does Weber disclose Applicant's claimed first set and second set of at least two handles (claim 50), or two different handles on the same arm (claims 40 and 49). Weber's handle 22 is only present once on each arm. Col. 6 l. 67; FIG. 3. Because Weber lacks multiple handles per arm, assignable to diverging or converging exercise, Weber requires movement of a pull pin or lock pin in a range of motion plate in order to adjust the machine for diverging exercise or converging. Col. 6, lines 11-23. Weber therefore fails to show Applicant's multiple handles per arm, and does not have the functional attributes of those handles.

Simonson does not fill the gap of Weber regarding Applicant's multiple handles per arm. Applicant's multiple handles on each arm claimed in claim 50 are explicitly assigned to diverging or converging exercise, while those claimed in claims 40 and 49 are assigned to push-type or pull-type exercise. While Simonson's arms each have two handles, these handles are not assigned to one of two types of exercise. Simonson provides only push-type, converging exercise. Col. 7, ll. 31-34 (describing the machine's pushing exercise and distinguishing it from pulling exercise); col. 9, ll. 1-23 (describing the only two forms of using the machine as direct upward movement or upward and converging movement). As such, Simonson's handles vary only in the grips they provide the user, and not the type of exercise in which they participate. Col. 5 ll. 59-61; FIG. 6. In contrast, Applicant has handles on each arm dedicated to pull-type or diverging exercise, which Simonson's machine cannot perform.

Because neither Weber nor Simonson shows Applicant's two sets of at least two handles (claim 50), or at least two different handles on one arm (claims 40 and 49), distributed between diverging and converging or between push-type and pull-type exercise, Applicant respectfully asserts that Applicant's claims 40, 49, 50, and dependent claims therefrom are allowable over Weber and Simonson.

Conclusion

In conclusion, Applicant respectfully asserts that its claims as amended herein are allowable. The combination of Weber and Simonson is not obvious, because Simonson teaches away from incorporating its pivot points into Weber or any machine with similar movement. Moreover, neither Weber nor Simonson disclose Applicant's first and second handle on each arm assigned to push-type or pull-type, or diverging or converging, exercise.

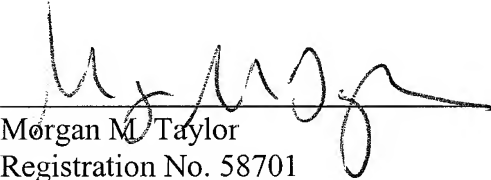
In light of the above remarks, Applicant believes there are no further issues regarding the patentability of the pending claims and respectfully requests the Examiner withdraw the rejections and allow all pending claims so that this case can pass on to issue.

Applicant includes herewith a Request for Continuing Examination and the associated fee. Applicant believes that no other fees are due in connection with the filing of this Response. However, the Commissioner is hereby authorized to charge or credit to our Deposit Account, No. 50-0975, any fees due in connection with the filing of this Response.

If there are any questions regarding this Response, the Examiner is invited to contact the undersigned at (314) 444-1316.

Respectfully submitted,
Lewis, Rice & Fingersh, L.C.

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Morgan M. Taylor
Registration No. 58701
Attorney for Applicants

Customer Number: 22822

Lewis, Rice and Fingersh, L.C.
500 N. Broadway, Suite 2000
St. Louis, MO 63102-2147
Tel: (314) 444-7600
Fax: (314) 612-1316